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OFFICE OF PETITIONS

In re Application	: DECISION ON APPLICATION
Dwayne Nelson	: FOR PATENT TERM ADJUSTMENT
Application No. 10/072,277	: AND
Filed: November 5, 2001	: NOTICE OF INTENT TO ISSUE
Patent No. 6,843,725	: CERTIFICATE OF CORRECTION
Issued: January 18, 2005	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705," filed January 18, 2005. Patentee requests that the patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred seventy-nine (179) days to two hundred sixty-one (261) days.

The application for patent term adjustment is GRANTED to the extent indicate herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **two hundred fifty-seven (257) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 18, 2005, the above-identified application matured into U.S. Patent No. 6,843,725. The instant request for reconsideration filed January 18, 2005 was timely filed within two months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of one hundred seventy-nine (179) days. Patentee states that the determination of patent term adjustment days should not have been assessed applicant delay of eighty-two (82) days for the late filing of the issue fee.

Patentee states that the patent is not subject to a terminal disclaimer.

The Office determined a patent term adjustment of one hundred seventy-nine (179) days based on an adjustment for PTO delay of two hundred sixty-one (261) days pursuant to 35 U.S.C. §154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), and eighteen (18) and thirty-six (36) days pursuant to 35 U.S.C. §154(b)(1)(A)(ii) and 37 C.F.R. §1.703(a)(2), reduced by Applicant's delay of eighty-two (82) days pursuant to 35 U.S.C. §154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b). The PTO delay of 261 days has been reviewed and found to be correct. The adjustment of 82 days is at issue.

Patentee asserts that the issue fee was timely paid pursuant to 37 C.F.R. §1.704(b) on September 27, 2004, in response to a Notice of Allowance mailed on June 23, 2004. A review of the application file reveals that the issue fee was filed on September 27, 2004, made timely for purposes of avoiding abandonment by including a Certificate of Mailing dated September 23, 2004. However, Certificates of Mailings are not taken into account in the calculation of patent term adjustment. See 37 C.F.R. §1.703(f). Accordingly, applicant delay should have been assessed as four (4) days.

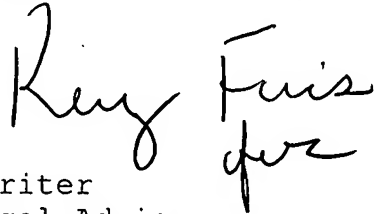
In view of the above, the patent term adjustment at the time of issuance was two hundred fifty-seven (257) days (261 days of PTO delay, reduced by 4 days of applicant delay). Issuance of a certificate of correction pursuant to 35 U.S.C. §254 and 37 C.F.R. §1.322 is appropriate.

The \$200.00 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 50-0388, as authorized.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. §254 and 37 C.F.R. §1.322. The certificate of

correction will indicate that the term of the above-identified patent is extended or adjusted by **two hundred fifty-seven (257) days** subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in cursive script, appearing to read 'Karin Ferriter', with a stylized flourish at the end.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Draft Certificate of Correction